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10 UNITED STATES BANKRUPTCY COURT
11 EASTERN DISTRICT OF WASHINGTON

12 In re:

13 **SHUMATE TRI-CITY, LLC; AND,**
14 **SHUMATE SPOKANE, LLC,**
15 **Debtors,**

Bankruptcy Case Nos: **09-05080-FLK11 and**
09-05081-FLK11

**OBJECTION TO MOTIONS
FOR ORDERS APPROVING
BID PROCEDURES AND
RELATED RELIEF**

16 Harley-Davidson Motor Company, Inc. ("HDMC"), by and through its
17 counsel, Nancy L. Isserlis of Winston & Cashatt and Peter J. Stone of Foley &
18 Lardner LLP, hereby objects to the motion filed by the debtor in each of these
19 bankruptcy cases for an order approving bid procedures and related relief.

20 Shumate Tri-City, LLC ("Shumate Tri-City") and Shumate Spokane, LLC
21 ("Shumate Spokane") are each authorized Harley-Davidson dealers, and their
22 relationships with HDMC are governed by separate Motorcycle Dealer Contracts
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1 (“Dealer Contract”). Each Dealer Contract confirms both HDMC’s right to
2 approve or disapprove any proposed ownership or management changes and that
3 HDMC will not unreasonably refuse to approve a proposed change.
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5 Shumate Tri-City and Shumate Spokane each entered into an Asset Purchase
6 Agreement with Ride Now Properties, LLC (“Ride Now”) to sell their principal
7 assets to Ride Now or an assignee. Each Asset Purchase Agreement makes clear
8 that among the conditions of any sale are that HDMC first approve the transaction
9 and agree to issue a new dealer contract to the purchaser and that the seller
10 surrender its current Dealer Contract with HDMC. In this respect, each Asset
11 Purchase Agreement is consistent with the Court’s December 23, 2009 Order
12 approving the debtor’s employment of a broker, in which the Court stated: “It is
13 further ordered that, in addition to approval of the Bankruptcy Court, any sale of
14 the assets or ownership of Shumate Spokane, LLC or Shumate Tri-City, LLC is
15 subject to the prior written approval of Harley-Davidson Motor Company.”
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18 Shumate Tri-City and Shumate Spokane have each filed motions asking this
19 Court for approval to sell their dealership assets to Ride Now, as a stalking horse,
20 or to another successful bidder at an auction. Each motion specifically
21 acknowledges that prior approval by HDMC is a condition precedent to the
22 proposed sale and requests permission to terminate each Dealer Contract upon final
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1 approval of the sale by HDMC and execution of a replacement dealer contract with
2 the approved buyer.

3 It typically takes HDMC 30–60 days to decide whether to approve or
4 disapprove a proposed sale, including the completion of background and credit
5 checks on the proposed owners and operators, analysis of the purchase agreements,
6 review of the buyer's financial statements and business plans, and confirmation of
7 compliance with all of HDMC's applicable policies. Because of the bankruptcies
8 of each dealer and HDMC's desire to be represented in the Tri-City and Spokane
9 markets, HDMC has advised Shumate Tri-City and Shumate Spokane that it will
10 do what it can to expedite its reviews. In fact, HDMC has agreed to either
11 conditionally approve or disapprove each proposed transaction within 30 days¹ of
12 receipt of the buyers' applications, financial statements and other required
13 information. HDMC has also agreed that if a letter of intent ("LOI") conditionally
14 approving a proposed sale to Ride Now is issued, it would be appropriate to then
15 hold an auction, recognizing that final completion of a sale and execution of a
16 contract with a new dealer will be subject to satisfaction of all of the conditions of
17 the LOI. Unfortunately, the bid procedures motions filed by Shumate Tri-City and
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¹ RCW 49.93.180 provides that a manufacturer may have 60 days from receipt of required information from the selling dealer and proposed buyer within which to decide whether it will consent to a proposed sale.

1 Shumate Spokane fail to recognize this necessary process; therefore, HDMC
2 objects to the motions.

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4 There are a wide variety of issues that are addressed by HDMC when it
5 issues a letter of intent conditionally approving a proposed sale, some of which
6 may be substantive and some of which are more procedural in nature. The LOI
7 conditions will vary on a case-by-case basis, with some conditions necessary to
8 assure the buyer's compliance with the terms of the new dealer contract and with
9 others depending upon such things as the proposed structure and timing of the sale
10 and on the financial and other qualifications of the buyers (which can't be assessed
11 until HDMC receives the buyers' complete applications and financial statements
12 and there has been an opportunity to confer with the buyers to discuss their plans).
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14 Among the things that are often addressed in a LOI are: the required initial
15 capitalization of the dealership, including operating cash on hand; facility issues,
16 including the need for an executed lease and the potential need for improvements;
17 proof of adequate insurance; a dealer license from the state; attendance at a new
18 dealer orientation program; initial orders and inventory requirements; service
19 related forms and issues; appropriate entity and *dba* names; confirmation of the
20 ownership structure and, in some cases such as here, the need for a separate
21 multiple dealership agreement; confirmation of a qualified onsite dealer operator;
22 succession planning; the establishment of sufficient floor plans; etc. Typically, if a
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1 LOI is issued and the buyer is motivated, the conditions set forth in the LOI can be
2 promptly addressed.

3 HDMC requests a hearing on its objections as soon as possible.

4 Dated this 8th day of March, 2010.

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7 **WINSTON & CASHATT**

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